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UNCLAS SECTION 01 OF 02 HARARE 002159

SIPDIS

DEPT FOR AF/PDPA FOR DALTON, MITCHELL AND SIMS
AF/S FOR DELISI, RAYNOR
NSC FOR JENDAYI FRAZER
LONDON FOR GURNEY
PARIS FOR NEARY
NAIROBI FOR PFLAUMER

SENSITIVE

E.O. 12958: N/A

TAGS: [PGOV](#) [PHUM](#) [PREL](#) [KPAO](#) [KMDR](#) [ZI](#)

SUBJECT: LEGAL BATTLE ON AFTER RELEASE OF ANZ DIRECTORS

REF: (A) HARARE 2132 (B) HARARE 1997 AND PREVIOUS

SENSITIVE BUT UNCLASSIFIED; NOT FOR INTERNET POSTING.

¶11. (SBU) SUMMARY: A court magistrate on October 29 ordered the release of four directors of the Associated Newspapers of Zimbabwe (ANZ), reserving judgment on criminal charges pending against them until November 13. Armed police continue to bar access to ANZ offices, preventing resumed publication of The Daily News (TDN) or The Daily News on Sunday (TDNS). ANZ lawyers advised the Embassy that they plan to seek a court order from the High Court requiring police to stand down and to permit publication. END SUMMARY.

¶12. (U) Four ANZ directors - Rachel Kupara (44), Stuart Mattinson (58), Brian Mutsau (43) and ANZ Chief Executive Officer Samuel Sipepa Nkomo (58) -- on October 29 were have been released on bail after spending two nights in police custody. Each paid Z\$50,000 (us\$9) to be freed, after the presiding magistrate Mishrod Guvamombe ordered the directors to return on November 13 for a determination on whether the directors have a case to answer on charges of "publishing without a license" and "contempt of court." Magistrate Guvamombe reserved judgment until November 13, saying he needed time to pore over a High Court ruling made in Bulawayo on October 27 that freed another ANZ director, Washington Sansole, who was arrested last Sunday and held overnight in police custody on charges of publishing without a license.

¶13. (U) In presenting her heads of argument in court, ANZ lawyer Beatrice Mtetwa complained of the "inhuman conditions" in the "tiny, unsanitary prison cell" in which the directors were held while in police custody. She also protested against the "limited access" given to the legal consulcounsel by the Officer Commanding at the police cells, adding that they were also denied food and medicine. "This is a violation of the basic human rights," Mtetwa told magistrate Guvamombe.

¶14. (U) The four directors of the country's only independent daily newspaper, The Daily News, had been were arrested in the afternoon on Monday, October 27 after presenting themselves to police in Harare. They were charged with publishing a newspaper without a license under the controversial Access to Information and Protection of Privacy Act (AIPPA). Prosecutors on October 29 altered the charge Interestingly, the charge was altered Wednesday morning, October 29 to include "contempt of court" charges counts.

¶15. (U) Under the headline "We're back!",¹ TDN went to press on October 25 after the Administrative Court ruled the previous day, October 24 that the state-appointed Media and Information Commission (MIC) "had not been properly constituted." (ref A). The court then directed that a properly constituted commission grant the ANZ a registration certificate by November 30 this year. This ruling, according to the arguments submitted by the ANZ lawyer Mtetwa to Magistrate Guvamombe, called off all its actions to date, rendered media regulations invalid and entitled ANZ go to press.

¶16. (U) Under AIPPA, the MIC has disciplinary powers to withdraw licenses; confiscate equipment and jail journalists for up to two years. More than 45 local journalists have been charged and four foreign journalists expelled since the law was passed.

¶17. (SBU) Meanwhile, the siege on ANZ offices mounted by armed police remains in force. ANZ legal adviser Gugulethu Moyo informed the Embassy that ANZ would file an urgent application in the High Court before the end of this week to seek the police's immediate removal and resumption of

publishing operations. Mtetwa advised that AIPPA was unclear on which legal venue was competent to order resumption of operations - the High Court, the Administrative Court, or the Magistrate's office. Arguably, any of the three could, although Mtetwa did not suggest ANZ would present the question to the Administrative Court (which found resoundingly in its favor October 24) with the matter pending before the other two.

18. (SBU) COMMENT: From South Africa, ANZ Chairman Strive Masiyiwa was quoted publicly as predicting that publication would resume "in a matter of weeks." Although the law appears to compel a finding that publication be permitted immediately, no court has ruled on the issue yet - the Administrative Court came closest in its order that ANZ's registration (the absence of which has been the basis of the government-induced shutdown) would be deemed effective on November 30. The courts will likely strain to avoid making a judgment they fear will be ignored (as the magistrate did), but ANZ appears prepared to make such avoidance impossible. For its part, the government has ignored the intent of a series of court decisions in ANZ's favor but has yet to defy an explicit court order, capitalizing instead on limits and omissions in each decision for some fig leaf of legal authority. The decisive sway held by Information Minister Moyo on this issue so far, however, suggests that the government is prepared to defy an explicit court order when the time comes.

SULLIVAN